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In the Supreme Court of the United States

OCTOBER TERM, 1976

GERALD ROJAS, SR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner complains that the district court did not conduct a sufficiently thorough *voir dire* examination of prospective jurors.

Following a jury trial in the United States District Court for the Middle District of Florida, petitioner was convicted of possession of cocaine with intent to distribute and conspiracy to commit that offense, in violation of 21 U.S.C. 841(a)(2), and 846. He was sentenced to concurrent terms of 10 years' imprisonment, to be followed by three years' special parole. The court of appeals affirmed (537 F. 2d 216; Pet. App. A-1 to A-8).

The facts are fairly summarized by the court of appeals. Petitioner was the source of cocaine for at least two sales, one on February 15, 1975, and the other the next day. The first sale was made to Florida undercover

policemen; the second was to other purchasers in the presence of an informant. In a search of petitioner's house authorized by a warrant, police officers found seven ounces of cocaine hidden in a chair.

Pursuant to Fed. R. Crim. P. 24, the district court solicited questions from both the prosecutor and defense counsel, then conducted the *voir dire* of prospective jurors itself. The court read the indictment to the panel and asked (1) whether any juror knew or was a client of any of the attorneys in the case; (2) whether any of the jurors knew the petitioner; (3) whether any members of the jurors' immediate family knew the lawyers of petitioner; (4) whether they knew any of the facts of the case or had read anything in the papers or seen anything on television concerning the case; and (5) whether any of them was now or ever had been employed by the government or a law enforcement agency. On two occasions the court asked if anyone on the panel knew of any reason why he could not serve and give both the government and the defendant a fair and impartial trial.

Petitioner objects to the court's refusal to ask several questions from his pre-trial submission of 69 queries concerning two areas of possible juror bias. He first objects to the court's refusal to inquire whether a juror would " 'believe that merely because one is a law enforcement officer he will always tell the truth, or do you believe that he may intentionally misrepresent something, exaggerate or not disclose when there is a duty to disclose, like any other witness who may not want to be completely accurate?' " (Pet. 3-4).

The conduct of the *voir dire* is entrusted to the sound discretion of the trial court. *Ristaino* v. *Ross*, 424 U.S. 589, 594. Whether that discretion was abused in a particular case is not a question warranting the attention of this Court. Nor was there error here; the trial court

was under no obligation to pose the question requested by petitioner. It is proper for the court to ask, when requested to do so in proper form, whether jurors are inclined to give special weight to the testimony of a police officer merely because he is a police officer. *Sellers* v. *United States*, 271 F. 2d 475 (C.A. D.C.); see also *Chavez* v. *United States*, 258 F. 2d 816, 819 (C.A. 10), certiorari denied, 359 U.S. 916. The question petitioner tendered, however, is improper. It is argumentative and apparently attempts to implant in the mind of a prospective juror the belief that a police officer would not want to testify truthfully.[1]

Petitioner also contends that the district court should have asked a series of questions (Pet. 4) allegedly designed to elicit jurors' attitudes toward drug-related crimes. The feelings of the jurors about the type of crime at issue do not, however, ordinarily call for special inquiry. An impartial jury can generally be obtained without an inquiry into every prejudice feared by the defendant. *Ristaino* v. *Ross*, *supra*, 424 U.S. at 595. The court of appeals here held that the district court had relied on " 'careful though general questions pertaining to the possibility of bias' " (Pet. App. A-4 to A-5,

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[1]Even if petitioner were entitled to questions concerning the credibility of police officers, refusal to ask proposed questions on that matter does not require reversal unless the testimony of a police officer might have had a decisive influence. *Brown* v. *United States*, 338 F. 2d 543, 545 (C.A. D.C.); *United States* v. *Jackson*, 448 F. 2d 539, 542 (C.A. 5). The principal witnesses against petitioner were an undercover police officer, a co-defendant cooperating with the prosecution, and an informant. Because the co-defendant had been a witness to everything the police officer observed, and the informant had been a witness to petitioner's distribution of cocaine, this case does not involve reliance on the uncorroborated testimony of a police officer (Pet. App. A-3). For these reasons the decision below does not, as suggested by petitioner (Pet. 7-8), conflict with the decision of the District of Columbia Circuit in *Brown*, *supra*.

quoting from *United States* v. *Eastwood*, 489 F. 2d 818, 820 (C.A. 5)). Under the circumstances the refusal to ask the proffered questions did not affect the essential fairness of petitioner's trial and was not an abuse of discretion.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1976.

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[2]A post-trial affidavit by Bobby Hornsby, the foreman of the jury, states that Hornsby had supported an organization to help people with drug problems (Pet. App. A-4). Petitioner asserts that if he had known this in advance of trial he would have exercised a peremptory challenge against Hornsby. The court of appeals pointed out, however, that there is no reason to conclude that Hornsby harbored bias against petitioner or those charged with drug offenses (Pet. App. A-4); indeed, as petitioner implicitly concedes by saying that he would have exercised a peremptory challenge against Hornsby, a challenge for cause would not have been well taken. The primary purpose of the *voir dire* is to ensure that the jurors are unbiased. The district court is not required to ask questions simply because the answers, although insufficient to show bias, may provide information that will guide counsel in exercising peremptory challenges; if it were required to ask such questions, essentially for counsel's information, *voir dire* could be interminable.